

1 RONALD J. TENPAS
2 Acting Assistant Attorney General
3 Environment and Natural Resources Division
4 U.S. Department Of Justice

5 ANN C. HURLEY (DC Bar No. 375676)
6 Trial Attorney
7 Environmental Enforcement Section
8 U.S. Department of Justice
9 301 Howard Street, Suite 1050
10 San Francisco, CA 94105
11 Tel: (415) 744-6491
12 Fax: (415) 744-6476
13 E-mail: ann.hurley@usdoj.gov

14 THOMAS P. O'BRIEN
15 United States Attorney
16 LEON W. WEIDMAN
17 Chief, Civil Division
18 MONICA L. MILLER
19 Assistant United States Attorney
20 California Bar No. 157695
21 Federal Building, Suite 7516
22 300 North Los Angeles Street
23 Los Angeles, California 90012
24 Tel: (213) 894-4061
25 Fax: (213) 894-7819

26 Attorneys for Plaintiff United States of America

27 UNITED STATES DISTRICT COURT
28 CENTRAL DISTRICT OF CALIFORNIA

29 THE UNITED STATES
30 OF AMERICA,

31 Plaintiff,

32 v.

33 THE COUNTY OF SAN
34 BERNARDINO, CALIFORNIA,

35 Defendant.

EDCV07-1454 SGL (OPx)

Civil Action No.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter against the County of San Bernardino pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Newmark, Muscoy and Source Control Operable Units ("OUs") of the Newmark Groundwater Contamination Superfund Site located in San Bernardino County, California.

B. The County of San Bernardino, including its departments, agencies and instrumentalities (collectively, "Settling Defendant") does not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

C. In its complaint, the United States alleges that the County of San Bernardino's Cajon Landfill operated for approximately seventeen years between 1963 and 1980 and caused or contributed to the groundwater contamination at the Site. The groundwater at the Site is principally contaminated with tetrachloroethylene (also known as perchloroethylene or "PCE"), trichloroethylene ("TCE"), and Freon 11 and 12.

D. The United States and Settling Defendant agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED, ADJUDGED, AND DECREED:

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II. JURISDICTION

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1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345 and 42 U.S.C. §§ 9607 and 9613(b) and also has personal jurisdiction over Settling Defendant. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendant waives all objections and defenses that it may have to jurisdiction of the Court or to venue in this District. Settling Defendant shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

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III. PARTIES BOUND

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2. This Consent Decree is binding upon the United States, and upon Settling Defendant and its successors and assigns. Any change in ownership or corporate, governmental or other legal status, including but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendant under this Consent Decree.

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IV. DEFINITIONS

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3. Unless otherwise expressly provided herein, terms used in this Consent Decree that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meanings assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

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a. "Cajon Landfill" shall mean the Cajon Sanitary Landfill, also known as the Verdemont Landfill, a disposal facility owned by the Settling Defendant and located in San Bernardino County, California, approximately five miles northwest of the City of San Bernardino, northwest of the intersection of Cajon Drive and Institution Road, and west of Interstate 215.

b. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, et seq.

1 c. "Consent Decree" shall mean this Consent Decree and all
2 appendices attached hereto, if any. In the event of conflict between this Consent
3 Decree and any appendix, this Consent Decree shall control.

4 d. "Day" shall mean a calendar day. In computing any period of
5 time under this Consent Decree, where the last day would fall on a Saturday,
6 Sunday, or federal holiday, the period shall run until the close of business of the
7 next day that is not a Saturday, Sunday or federal holiday.

8 e. "DOJ" shall mean the United States Department of Justice and
9 any successor departments, agencies or instrumentalities of the United States to
10 DOJ.

11 f. "EPA" shall mean the United States Environmental Protection
12 Agency and any successor departments, agencies or instrumentalities of the United
13 States to EPA.

14 g. "EPA Hazardous Substance Superfund" shall mean the
15 Hazardous Substance Superfund established by the Internal Revenue Code, 26
16 U.S.C. § 9507.

17 h. "Explanation of Significant Differences" or "ESD" shall mean
18 the Explanation of Significant Differences to the Newmark and Muscoy Records
19 of Decision, which was signed by the Regional Administrator, EPA Region 9, or
20 his/her delegatee, on August 9, 2004, and all attachments thereto.

21 i. "Future Response Costs" shall mean all costs, including but not
22 limited to direct and indirect costs, that EPA, the U.S. Army, DOJ on behalf of
23 EPA and/or the U.S. Army, and/or the United States on behalf of the EPA and/or
24 the U.S. Army, incurs and pays at or in connection with the Site after the date of
25 entry of this Consent Decree, and also includes any such costs which the U.S.
26 Army would otherwise be entitled to pursue against Settling Defendant under
27 Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, for cost
28 recovery and/or contribution in connection with the Site.

1 j. "Interest" shall mean interest at the rate specified for interest on
2 investments of the EPA Hazardous Substance Superfund established by 26 U.S.C.
3 § 9507, compounded annually on October 1 of each year, in accordance with 42
4 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the
5 time the interest accrues. The rate of interest is subject to change on October 1 of
6 each year.

7 k. "Interim Remedial Actions" shall mean those activities, except
8 for Operation and Maintenance, to be undertaken to implement the Newmark and
9 Muscoy OUs.

10 l. "Newmark Groundwater Contamination Superfund Site" shall
11 mean the site listed by EPA on the National Priorities List ("NPL"), set forth at 40
12 C.F.R. Part 300, Appendix B, by publication in the Federal Register on March 31,
13 1989, 54 Fed. Reg. 13296, 13301.

14 m. "Paragraph" shall mean a portion of this Consent Decree
15 identified by an Arabic numeral or an upper or lower case letter.

16 n. "Parties" shall mean the United States and the Settling
17 Defendant.

18 o. "Past Response Costs" shall mean all costs, including but not
19 limited to direct and indirect costs, that EPA, the U.S. Army, DOJ on behalf of
20 EPA and/or the U.S. Army, and/or the United States on behalf of the EPA and/or
21 the U.S. Army, has incurred or paid at or in connection with the Site through the
22 date of entry of this Consent Decree, plus accrued Interest on all such costs
23 through such date, and also includes any such costs and accrued Interest which the
24 U.S. Army would otherwise be entitled to pursue against Settling Defendant under
25 Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, for cost
26 recovery and/or contribution in connection with the Site.

27 p. "Plaintiff" shall mean the United States.

28 q. "Records of Decision" or "RODs" shall mean the EPA Records

1 of Decision relating, respectively, to the Newmark OU, signed on August 4, 1993,
2 and relating to the Muscoy OU, signed on March 24, 1995 by the Regional
3 Administrator, EPA Region 9, or his/her delegatee, and all attachments thereto.

4 r. "Section" shall mean a portion of this Consent Decree
5 identified by a Roman numeral.

6 s. "Settling Defendant" shall mean the County of San Bernardino,
7 California, including its departments, agencies and instrumentalities.

8 t. "Site" shall mean the Newmark, Muscoy and Source Control
9 OUs of the Newmark Groundwater Contamination Superfund Site, located in the
10 County of San Bernardino, California. The Site includes the Cajon Landfill. The
11 Site does not include any other OUs in the Newmark Groundwater Contamination
12 Superfund Site or any areas outside of the Newmark Groundwater Contamination
13 Superfund Site. There are no other OUs in the Site at this time.

14 u. "Source Control Operable Unit" or "Source Control OU" shall
15 mean the operable unit for the investigation and remediation of sources of
16 contamination in the Newmark Groundwater Contamination Superfund Site.

17 v. "United States" shall mean the United States of America,
18 including its departments, agencies and instrumentalities.

19 **V. STATEMENT OF PURPOSE**

20 4. By entering into this Consent Decree, the mutual objective of the
21 Parties is to resolve the claims of the parties against each other with respect to the
22 Site and for Settling Defendant to make a cash payment, which includes a
23 premium, to address the Settling Defendant's alleged liability for Past Response
24 Costs, Future Response Costs, and the Site as provided in the Covenant Not to Sue
25 by Plaintiff in Section VIII, and subject to the Reservations of Rights by United
26 States in Section IX.

27 **VI. PAYMENT OF RESPONSE COSTS**

28 5. No later than ten (10) business days after Settling Defendant receives

1 notice from the United States that this Consent Decree has been lodged, Settling
2 Defendant shall deposit \$11,000,000.00 (eleven million dollars) into an escrow
3 account bearing interest on commercially reasonable terms, in a
4 federally-chartered bank (the "Escrow Account"). If the Consent Decree is not
5 entered by the Court, and the time for any appeal of that decision has run or if the
6 Court's denial of entry is upheld on appeal, the monies placed in escrow, together
7 with accrued interest thereon, shall be returned to Settling Defendant. If the
8 Consent Decree is entered by the Court, Settling Defendant shall, within thirty
9 (30) days thereof, cause the monies in the Escrow Account to be paid to EPA in
10 accordance with Paragraphs 6 and 7 below.

11 6. Payment shall be made by FedWire Electronic Funds Transfer
12 ("EFT") to the U.S. Department of Justice account in accordance with EFT
13 instructions provided to Settling Defendant by the Financial Litigation Unit of the
14 U.S. Attorney's Office in the Central District of California following lodging of
15 the Consent Decree, and in accordance with the requirements of Paragraph 5.

16 7. Within five (5) business days of the deposit into the Escrow Account,
17 pursuant to Paragraph 5, the Settling Defendant shall send notice that the Escrow
18 Account has been opened and funded to EPA and DOJ in accordance with Section
19 XV (Notices and Submissions). At the time of payment, Settling Defendant shall
20 also send notice that payment has been made to EPA and DOJ in accordance with
21 Section XV (Notices and Submissions). Notices pursuant to this Paragraph shall
22 reference the EPA Region and Site-Spill ID Number 09J5, DOJ Case Number
23 90-11-3-06902/2, and the Civil Action Number.

24 8. The total amount to be paid pursuant to Paragraph 5 shall be
25 deposited in the Newmark Groundwater Contamination Site Special Account
26 within the EPA Hazardous Substance Superfund to be retained and used to
27 conduct or finance response actions at or in connection with the Newmark
28 Groundwater Contamination Superfund Site, or to be transferred by EPA to the

1 EPA Hazardous Substance Superfund.

2 **VII. FAILURE TO COMPLY WITH REQUIREMENTS**
3 **OF CONSENT DECREE**

4 9. Interest on Late Payments. If Settling Defendant fails to make any
5 payment under Paragraph 5 by the required due date, Interest shall continue to
6 accrue on the unpaid balance through the date of payment.

7 10. Stipulated Penalties.

8 a. If any amounts due under Paragraph 5 are not paid by the
9 required due date, Settling Defendant shall be in violation of this Consent Decree
10 and shall pay, as a stipulated penalty, in addition to the Interest required by
11 Paragraph 9, \$5,000.00 (five thousand dollars) per violation per day that such
12 payment is late for days 1-30, and \$10,000.00 (ten thousand dollars) per day for
13 each day thereafter.

14 b. If Settling Defendant does not comply with any requirement in
15 Sections XII (Access and Institutional Controls), XIII (Access to Information)
16 and/or XIV (Retention of Records) of this Consent Decree, Settling Defendant
17 shall be in violation of this Consent Decree and shall pay to EPA, as a stipulated
18 penalty, \$1,000.00 (one thousand dollars) per violation per day of such
19 noncompliance.

20 c. Stipulated penalties are due and payable within thirty (30) days
21 of the date of the demand for payment of the penalties by EPA. All payments to
22 EPA under this Paragraph shall be identified as "stipulated penalties" and shall be
23 made by certified or cashier's check made payable to "EPA Hazardous Substance
24 Superfund." The check, or a letter accompanying the check, shall reference the
25 name and address of the party making payment, the Site name, the EPA Region
26 and Site Spill ID Number 09J5, DOJ Case Number 90-11-3-06902/2, and the Civil
27 Action Number. Settling Defendant shall send the check (and any accompanying
28 letter) to:

1 U.S. Environmental Protection Agency
2 Region 9 Superfund Receivable
3 P.O. Box 371099M
4 Pittsburgh, PA 15251

5 d. At the time of each payment pursuant to this Paragraph,
6 Settling Defendant shall also send notice that such payment has been made to EPA
7 and DOJ in accordance with Section XV (Notices and Submissions). Such notice
8 shall reference the EPA Region and Site/Spill ID Number 09J5, DOJ Case
9 Number 90-11-3-06902/2, and the Civil Action Number.

10 e. Stipulated penalties shall accrue as provided in this Paragraph
11 regardless of whether EPA has notified Settling Defendant of the violation or
12 made a demand for payment, but need only be paid upon demand. All penalties
13 shall begin to accrue on the day after payment or performance is due or the day a
14 violation occurs, and shall continue to accrue through the date of payment or the
15 final day of correction of the noncompliance or completion of the activity.
16 Nothing herein shall prevent the simultaneous accrual of separate penalties for
17 separate violations of this Consent Decree.

18 11. If the United States brings an action to enforce this Consent Decree,
19 Settling Defendant shall reimburse the United States for all costs of such action,
20 including but not limited to costs of attorney time.

21 12. Payments made under this Section shall be in addition to any other
22 remedies or sanctions available to Plaintiff by virtue of Settling Defendant's failure
23 to comply with the requirements of this Consent Decree.

24 13. Notwithstanding any other provision of this Section, the United States
25 may, in its unreviewable discretion, waive payment of any portion of the stipulated
26 penalties that have accrued pursuant to this Consent Decree. Payment of
27 stipulated penalties shall not excuse Settling Defendant from payment as required
28 by Section VI (Payment of Response Costs) or from performance of any other
requirements of this Consent Decree.

1 **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

2 14. Covenant Not to Sue by United States. Except as specifically
3 provided in Section IX (Reservation of Rights by United States), the United States
4 covenants not to sue or to take administrative action against Settling Defendant
5 pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a),
6 and Section 3007 of the Resource Conservation and Recovery Act, 42 U.S.C. §
7 6973, for Past Response Costs, Future Response Costs and/or the Site. This
8 covenant not to sue shall take effect upon receipt by EPA of all payments required
9 by Section VI (Reimbursement of Response Costs) and any amount due under
10 Section VII (Failure to Comply with Requirements of Consent Decree). This
11 covenant not to sue is conditioned upon the satisfactory performance by Settling
12 Defendant of its obligations under this Consent Decree. This covenant not to sue
13 extends only to Settling Defendant and does not extend to any other person.

14 **IX. RESERVATION OF RIGHTS BY UNITED STATES**

15 15. General Reservations of Rights by United States. The United States
16 reserves, and this Consent Decree is without prejudice to, all rights against
17 Settling Defendant with respect to all matters not expressly included within the
18 Covenant Not to Sue by United States in Paragraph 14. Notwithstanding any other
19 provision of this Consent Decree, the United States reserves all rights against
20 Settling Defendant with respect to:

- 21 a. liability for failure of Settling Defendant to meet a requirement
22 of this Decree;
- 23 b. criminal liability;
- 24 c. liability for damages for injury to, destruction of, or loss of
25 natural resources, and for the costs of any natural resource damage assessments;
- 26 d. liability for injunctive relief or administrative order
27 enforcement under Section 106 of CERCLA, 42 U.S.C. § 9606, for response
28 actions that are not within the definition of the Site;

1 e. liability for costs incurred or to be incurred that are not within
2 the definition of Past Response Costs or Future Response Costs;

3 f. liability, based upon Settling Defendant's transportation,
4 treatment, storage, or disposal, or the arrangement for the transportation,
5 treatment, storage, or disposal, of a hazardous substance or a solid waste at or in
6 connection with the Site, occurring after signature of this Consent Decree by
7 Settling Defendant; and

8 g. liability arising from the past, present, or future disposal,
9 release or threat of release of a hazardous substance, pollutant, or contaminant
10 outside of the Site.

11 16. United States Pre-Certification Reservations. Notwithstanding any
12 other provision of this Consent Decree, the United States reserves, and this
13 Consent Decree is without prejudice to, the right to institute proceedings in this
14 action or in a new action, or to issue an administrative order seeking to compel
15 Settling Defendant (1) to perform response actions relating to the Site or (2) to
16 reimburse the United States for additional costs of response if, prior to
17 Certification of Completion of the either the Newmark and Muscoy Operable Unit
18 Interim Remedial Action:

19 (i) conditions at the Site, previously unknown to EPA, are
20 discovered, or

21 (ii) information, previously unknown to EPA, is received, in whole
22 or in part, and EPA determines that these previously unknown conditions or
23 information together with any other relevant information indicates that either
24 Newmark or Muscoy Operable Unit Interim Remedial Action is not protective of
25 human health or the environment.

26 17. United States Post-Certification Reservations. Notwithstanding any
27 other provision of this Consent Decree, the United States reserves, and this
28 Consent Decree is without prejudice to, the right to institute proceedings in this

1 action or in a new action, or to issue an administrative order seeking to compel
2 Settling Defendant (1) to perform response actions relating to the Site or (2) to
3 reimburse the United States for additional costs of response if, subsequent to
4 Certification of Completion of either the Newmark or Muscoy Operable Unit
5 Interim Remedial Action:

6 (i) conditions at the Site, previously unknown to EPA, are
7 discovered, or

8 (ii) information, previously unknown to EPA, is received, in whole
9 or in part, and EPA determines that these previously unknown conditions or
10 information together with any other relevant information indicates that either the
11 Newmark or Muscoy Operable Unit Interim Remedial Action is not protective of
12 human health or the environment.

13 18. For purposes of Paragraph 16, the information and the conditions
14 known to EPA shall include only that information and those conditions known to
15 EPA as of the date the RODs for the Newmark and Muscoy Operable Unit Interim
16 Remedial Actions, respectively, were signed and set forth in those RODs and the
17 administrative records supporting those RODs. For purposes of Paragraph 17, the
18 information and the conditions known to EPA shall include only that information
19 and those conditions known to EPA as of the date of Certification of Completion
20 of the Newmark and Muscoy Operable Unit Interim Remedial Actions,
21 respectively, the administrative records supporting those RODs, and the post-ROD
22 administrative records.

23 **X. COVENANT NOT TO SUE BY SETTLING DEFENDANT**

24 19. Settling Defendant covenants not to sue and agrees not to assert any
25 claims or causes of action against the United States, or its contractors or
26 employees, with respect to Past Response Costs, Future Response Costs, the Site,
27 or this Consent Decree, including but not limited to:

28 a. any direct or indirect claim for reimbursement from the

1 Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or
2 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any
3 other provision of law;

4 b. any claim arising out of the Newmark, Muscoy or Source
5 Control Operable Units, or out of the response actions for which the Past
6 Response Costs or Future Response Costs were incurred, including any claim
7 under the United States Constitution, the Constitution of the State, the Tucker Act,
8 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended,
9 or at common law; or

10 c. any claim against the United States pursuant to Sections 107
11 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to Past Response
12 Costs and Future Response Costs, or the Site.

13 20. Except as provided in Paragraph 26 (Waiver of Claim-Splitting
14 Defenses), these covenants not to sue shall not apply in the event the United States
15 brings a cause of action or issues an order pursuant to the reservations set forth in
16 Paragraphs 15(c) - (h), 16 and 17, but only to the extent that Settling Defendant's
17 claims arise from the same response action, response costs, or damages that the
18 United States is seeking pursuant to the applicable reservation.

19 21. Nothing in this Consent Decree shall be deemed to constitute
20 approval or preauthorization of a claim within the meaning of Section 111 of
21 CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

22 22. Except for any claims against its own insurers, Settling Defendant
23 agrees not to assert any claims and to waive all claims or causes of action that it
24 may have for all matters relating to Past Response Costs, Future Response Costs,
25 or the Site, including for cost recovery or contribution, against any person under
26 Sections 107(a) and/or 113 of CERCLA, 42 U.S.C. §§ 9607(a) and 9613, with
27 respect to the Site as of the date of entry of the Consent Decree. This waiver shall
28 not apply with respect to any defense, claim, or cause of action that Settling

1 Defendant may have against any person if such person asserts a claim or cause of
2 action relating to the Site against the Settling Defendant.

3 **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

4 23. Except as provided in Paragraph 22, nothing in this Consent Decree
5 shall be construed to create any rights in, or grant any cause of action to, any
6 person not a Party to this Consent Decree. Except as provided in Paragraph 22,
7 the Parties expressly reserve any and all rights (including, but not limited to, any
8 right to contribution), defenses, claims, demands, and causes of action which each
9 Party may have with respect to any matter, transaction, or occurrence relating in
10 any way to the Site against any person not a Party hereto.

11 24. The Parties agree, and by entering this Consent Decree this Court
12 finds, that Settling Defendant is entitled, as of the date of entry of this Consent
13 Decree, to protection from contribution actions or claims as provided by Section
14 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for "matters addressed" in this
15 Consent Decree. The "matters addressed" in this Consent Decree are Past
16 Response Costs, Future Response Costs and the Site. The matters addressed in
17 this Consent Decree do not include those response costs or response actions as to
18 which the United States has reserved its rights under this Consent Decree (except
19 for claims for failure to comply with this Decree), in the event that the United
20 States asserts rights against Settling Defendant within the scope of such
21 reservations.

22 25. Settling Defendant agrees that, with respect to any suit or claim for
23 contribution brought against it for matters related to this Consent Decree, it will
24 notify EPA and DOJ in writing within ten (10) business days of service of the
25 complaint or claim upon it. In addition, Settling Defendant shall notify EPA and
26 DOJ within ten (10) business days of service or receipt of any Motion for
27 Summary Judgment, and within ten (10) business days of receipt of any order from
28 a court setting a case for trial, for matters related to this Consent Decree.

1 26. In any subsequent administrative or judicial proceeding initiated by
2 the United States for injunctive relief, recovery of response costs, or other relief
3 relating to the Site, Settling Defendant shall not assert, and may not maintain, any
4 defense or claim based upon the principles of waiver, res judicata, collateral
5 estoppel, issue preclusion, claim-splitting, or other defenses based upon any
6 contention that the claims raised by the United States in the subsequent proceeding
7 were or should have been brought in the instant case; provided, however, that
8 nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by
9 Plaintiff set forth in Section VIII.

10 **XII. ACCESS AND INSTITUTIONAL CONTROLS**

11 27. If any property where access and/or land/water use restrictions are
12 needed to implement response activities at the Site is owned or controlled by
13 Settling Defendant, Settling Defendant shall:

14 a. commencing on the Effective Date of this Consent Decree,
15 provide the United States and its representatives, including EPA and its
16 contractors, with access at all reasonable times to such property, for the purpose of
17 conducting any response activity related to the Site, including, but not limited to,
18 the following activities:

- 19 (1) Monitoring, investigation, removal, remedial or other
20 activities at the Site;
- 21 (2) Verifying any data or information submitted to the
22 United States or the State;
- 23 (3) Conducting investigations relating to contamination at or
24 near the Site;
- 25 (4) Obtaining samples;
- 26 (5) Assessing the need for, planning, or implementing
27 additional response actions at or near the Site;
- 28 (6) Inspecting and copying records, operating logs,

1 contracts, or other documents maintained or generated by Settling Defendant or
2 their agents, consistent with Section XIII (Access to Information); and

3 (7) Determining whether the Site or other property is being
4 used in a manner that is prohibited or restricted, or that may need to be prohibited
5 or restricted, by or pursuant to this Consent Decree, by federal, State or other
6 applicable law, or by court order; and

7 b. commencing on the Effective Date of this Consent Decree,
8 refrain from using such property in any manner that would interfere with or
9 adversely affect the integrity or protectiveness of the remedial measures to be
10 implemented at the Site, including, but not limited to, institutional controls
11 described in the ESD.

12 28. If EPA determines that land/water use restrictions in the form of state
13 or local laws, regulations, ordinances or other governmental controls are needed to
14 implement response activities at the Site, ensure the integrity and protectiveness
15 thereof, or ensure non-interference therewith, Settling Defendant shall cooperate
16 with EPA's efforts to secure such governmental controls.

17 29. Notwithstanding any provision of this Consent Decree, the United
18 States retains all of its access authorities and rights, as well as all of its rights to
19 require land/water use restrictions, including enforcement authorities related
20 thereto, under CERCLA and any other applicable statute or regulations.

21 **XIII. ACCESS TO INFORMATION**

22 30. Settling Defendant shall provide to EPA, upon request, copies of all
23 records, reports, or information (hereinafter referred to as "records") within its
24 possession or control or that of its contractors or agents relating to activities at the
25 Site, including, but not limited to, sampling, analysis, chain of custody records,
26 manifests, trucking logs, receipts, reports, sample traffic routing, correspondence,
27 or other documents or information related to the Site.

28 31. Confidential Business Information and Privileged Documents.

1 a. Settling Defendant may assert business confidentiality claims
2 covering part or all of the records submitted to Plaintiff under this Consent Decree
3 to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA,
4 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Records determined to be
5 confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2,
6 Subpart B. If no claim of confidentiality accompanies records when they are
7 submitted to EPA, or if EPA has notified Settling Defendant that the records are
8 not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R.
9 Part 2, Subpart B, the public may be given access to such records without further
10 notice to Settling Defendant.

11 b. Settling Defendant may assert that certain records are
12 privileged under the attorney-client privilege or any other privilege recognized by
13 federal law. If Settling Defendant asserts such a privilege in lieu of providing
14 records, it shall provide Plaintiff with the following: (1) the title of the record; (2)
15 the date of the record; (3) the name, title, affiliation (e.g., company or firm), and
16 address of the author of the record; (4) the name and title of each addressee and
17 recipient; (5) a description of the subject of the record; and (6) the privilege
18 asserted. If a claim of privilege applies only to a portion of a record, the record
19 shall be provided to EPA in redacted form to mask the privileged information
20 only. Settling Defendant shall retain all records that it claims to be privileged until
21 the United States has had a reasonable opportunity to dispute the privilege claim
22 and any such dispute has been resolved in the Settling Defendant's favor.
23 However, no records created or generated pursuant to the requirements of this or
24 any other settlement with the United States shall be withheld on the grounds that
25 they are privileged.

26 32. No claim of confidentiality shall be made with respect to any data,
27 including but not limited to, all sampling, analytical, monitoring, hydrogeologic,
28 scientific, chemical, or engineering data, or any other records evidencing

1 conditions at or around the Site.

2 **XIV. RETENTION OF RECORDS**

3 33. Until ten (10) years after the entry of this Consent Decree, Settling
4 Defendant shall preserve and retain all records now in its possession or control, or
5 which come into its possession or control, that relate in any manner to response
6 actions taken at the Site or the liability of any person for response actions or
7 response costs at or in connection with the Site, regardless of any corporate or
8 governmental retention policy to the contrary, with the exception of those records
9 provided to the United States prior to the lodging of this Decree and specifically
10 listed in Appendix A.

11 34. After the conclusion of the ten-year document retention period in the
12 preceding paragraph, Settling Defendant shall notify EPA and DOJ at least ninety
13 (90) days prior to the destruction of any records, and, upon request by EPA or
14 DOJ, Settling Defendant shall deliver any such records to EPA. Settling
15 Defendant may assert that certain records are privileged under the attorney-client
16 privilege or any other privilege recognized by federal law. If Settling Defendant
17 asserts such a privilege, it shall provide Plaintiff with the following: (1) the title of
18 the record; (2) the date of the record; (3) the name title, affiliation (e.g., company
19 or firm), and address of the author of the record; (4) the name and title of each
20 addressee and recipient; (5) a description of the subject of the record; and (6) the
21 privilege asserted. If a claim of privilege applies only to a portion of a record, the
22 record shall be provided to EPA in redacted form to mask the privileged
23 information only. Settling Defendant shall retain all records that it claims to be
24 privileged until the United States has had a reasonable opportunity to dispute the
25 privilege claim and any such dispute has been resolved in the Settling Parties'
26 favor. However, no records created or generated pursuant to the requirements of
27 this or any other settlement with the United States shall be withheld on the
28 grounds that they are privileged.

1 Maxine Morisaki
2 Deputy County Counsel
3 County of San Bernardino
385 North Arrowhead Ave., Fourth Floor
San Bernardino, CA 92415-0140

4 Peter Wulfman
5 Division Manager
6 Solid Waste Management
7 County of San Bernardino
222 West Hospitality Lane, Second Floor
San Bernardino, CA 92415-0017

8 **XVI. EFFECTIVE DATE**

9 37. The Effective Date of this Consent Decree shall be the date upon
10 which this Consent Decree is entered by the Court, except as otherwise provided
11 herein.

12 **XVII. RETENTION OF JURISDICTION**

13 38. This Court shall retain jurisdiction over this matter for the purpose of
14 interpreting and enforcing the terms of this Consent Decree.

15 **XVIII. INTEGRATION**

16 39. This Consent Decree constitutes the final, complete and exclusive
17 agreement and understanding among the Parties with respect to the settlement
18 embodied in this Consent Decree. The Parties acknowledge that there are no
19 representations, agreements or understandings relating to the settlement other than
20 those expressly contained in this Consent Decree.

21 **XIX. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

22 40. This Consent Decree shall be lodged with the Court for a period of
23 not less than thirty (30) days for public notice and comment. The United States
24 reserves the right to withdraw or withhold its consent if the comments regarding
25 the Consent Decree disclose facts or considerations that indicate that this Consent
26 Decree is inappropriate, improper, or inadequate. Settling Defendant consents to
27 the entry of this Consent Decree as executed without further notice.

28 41. If for any reason this Court should decline to approve this Consent

1 Decree in the form presented, this agreement is voidable at the sole discretion of
2 any party and the terms of the agreement may not be used as evidence in any
3 litigation between the Parties.

4 **XX. SIGNATORIES/SERVICE**

5 42. Each of the undersigned representatives of Settling Defendant and the
6 Assistant Attorney General for the Environment and Natural Resources Division
7 of the United States Department of Justice certifies that he or she is authorized to
8 enter into the terms and conditions of this Consent Decree and to execute and bind
9 legally such Party to this document.

10 43. Settling Defendant hereby agrees not to oppose entry of this Consent
11 Decree by this Court or to challenge any provision of this Consent Decree, unless
12 the United States has notified Settling Defendant in writing that it no longer
13 supports entry of the Consent Decree.

14 44. Settling Defendant shall identify, on the attached signature page, the
15 name and address of an agent who is authorized to accept service of process by
16 mail on behalf of that Party with respect to all matters arising under or relating to
17 this Consent Decree. Settling Defendant hereby agrees to accept service in that
18 manner and to waive the formal service requirements set forth in Rule 4 of the
19 Federal Rules of Civil Procedure and any applicable local rules of this Court,
20 including but not limited to, service of a summons. The Parties agree that Settling
21 Defendant need not file an answer to the complaint in this action unless or until
22 the Court expressly declines to enter this Consent Decree.

23 **XXI. APPENDICES**

24 45. The following appendices are attached to and incorporated into this
25 Consent Decree:

26 "Appendix A" is a complete list of all records previously provided by the
27 Settling Defendant to the United States prior to the date of lodging this Decree.
28

1 **XXII. FINAL JUDGMENT**

2 46. Upon approval and entry of this Consent Decree by the Court, this
3 Consent Decree shall constitute the final judgment between and among the United
4 States and Settling Defendant. The Court finds that there is no just reason for
5 delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P.
6 54 and 58.

7 SO ORDERED THIS ____ DAY OF _____, 2007.

8
9 United States District Judge

1 THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of
2 United States v. County of San Bernardino, relating to the Newmark Groundwater
3 Contamination Superfund Site.

4 FOR THE UNITED STATES OF AMERICA

5
6 Date: *October 29, 2007*

7 _____
8 Keith Takata
9 Superfund Division Director
10 U.S. Environmental Protection Agency
11 Region IX
12 75 Hawthorne St., SFD
13 San Francisco, CA 94105

14
15 Date: *October 30, 2007*

16 _____
17 Marie M. Rongone
18 Senior Counsel
19 U.S. Environmental Protection Agency
20 Region IX
21 75 Hawthorne St., ORC-3
22 San Francisco, CA 94105

1 THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of
2 United States v. County of San Bernardino, relating to the Newmark Groundwater
3 Contamination Superfund Site.

4 FOR DEFENDANT COUNTY OF SAN
5 BERNARDINO

6 Date:

7 _____
8 Paul Biane
9 Chairman of the Board of Supervisors
385 North Arrowhead Ave., Fourth Floor
San Bernardino, CA 92415-0110

10 Agent Authorized to Accept Service on Behalf of Above-signed Party:

11 _____
12 Dena M. Smith
13 Clerk of the Board of Supervisors
14 385 North Arrowhead Ave., Second Floor
San Bernardino, CA 92415-0130

15 Approved as to Legal Form:

16 Date:

17 _____
18 Marc S. Maister
19 Irell & Manella LLP
20 840 Newport Center Drive, Suite 400
21 Newport Beach, CA 92660
22
23
24
25
26
27
28